Australia-India Economic Cooperation and Trade Agreement (ECTA) Rules of Origin

Guide to claiming preferential tariff treatment under ECTA for goods imported into Australia

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1 Overview

1.1 Purpose

1.1.1 This Guide explains how to determine whether goods that are imported into Australia are eligible for preferential rates of customs duty under the *India-Australia Economic Cooperation and Trade Agreement* (the Agreement or ECTA) as in force from 29 December 2022, in accordance with the *Customs Act 1901* and Indian Regulations.

1.2 Coverage of the Guide

1.2.1 This Guide deals with origin issues as they relate to ECTA.

1.2.2 ECTA was signed virtually on 2 April 2022 by the Hon Dan Tehan MP, Minister for Trade, Tourism and Investment and Piyush Goyal, Minister of Commerce and Industry, and entered into force on 29 December 2022.

1.2.3 Importers may claim preferential rates of customs duty for eligible goods in accordance with the Agreement on the basis that importers can satisfy the requirements contained in Division 1JA of Part VIII of the *Customs Act 1901*. The eligible goods are referred to under Division 1JA as 'Indian originating goods'.

1.2.4 Further information is also available at the Australian Border Force ECTA webpage and on the Department of Foreign Affairs and Trade's ECTA website.

1.2.5 Questions relating to the treatment of goods being exported from Australia claiming preferential rates of customs duty as Australian originating goods should be directed to: ftaorigin@dfat.gov.au

1.2.6 Questions relating to the treatment of goods being imported into Australia claiming preferential rates of customs duty as Indian originating goods should be directed to: origin@abf.gov.au

1.2.7 Questions concerning refunds under ECTA that are not covered by Section 8.8 of this Guide should be directed to: nationalrefunds@abf.gov.au

1.3 Import declaration codes

1.3.1 Before making a claim for preferential rates of customs duty, importers must take reasonable care to ensure that their goods meet the relevant rules of origin (ROO) and do not breach the consignment rules of the Agreement. The codes that must be input into the Integrated Cargo System (ICS) or noted on the appropriate hard-copy form (e.g. B650 N10, Import Declaration) to claim preferential rates of customs duty for Indian originating goods are:

ICS field	Code	Description	Legislative reference
Preference Scheme Type	IECT	Australia-India Economic Cooperation and Trade Agreement	Customs Act, Division 1JA
Preference Rule Type	WO	Goods wholly obtained or produced in a Party	Customs Act, Division 1JA, Subdivision B
	PSR	Goods produced from non-originating materials	Customs Act, Division 1JA, Subdivision C India Regulations
Preference Origin Country	IN	India	

1.3.2 Under ECTA, Issuing Bodies in India may include a range of Origin Criteria on the COO in Box 6 (See paragraph 8.3.3).

1.3.3 For the purpose of entering goods into the ICS, the relevant Preference Rule code for goods making use of the General Rule (See section 6.2) is PSR even where the COO may use the Origin Criteria such as **CTSH + 35% Build-Up** or **CTSH + 45% Build Down**.

1.3.4 The code to obtain a refund for overpaid duties under ECTA is:

Refund Reason Code	Item	Description	Conditions
23A10A	10A	Indian originating goods	Duty has been paid on the goods.
	10B	Goods that would have been Indian originating goods if, at the time the goods were imported, the importer held a certificate of origin (within the meaning of subsection 153ZML(1) of the Act), or a copy of one, for the goods	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a certificate of origin (within the meaning of subsection 153ZML(1) of the Act), or a copy of one, for the goods at the time of making the application for the refund.

1.3.5 Refund circumstances are set out in Items 10A and 10B of the table in section 23 of the Customs (International Obligations) Regulation 2015.

1.3.6 More information about refunds is included in Section 8.8.

1.4 Abbreviations

1.4.1 The following abbreviations and terminology are used throughout this Guide:

Agreement or ECTA	*The India-Australia Economic Cooperation and Trade Agreement* done on 2 April 2022, as amended and in force for Australia from time to time. Also referred to as the Australia-India Economic Cooperation and Trade Agreement.
ABF	Australian Border Force
ACN	Australian Customs Notice (also includes Department of Home Affairs Notices (DHAN) and Department of Immigration and Border Protection Notices (DIBPN))
Build-down Method	Based on the Value of Non-Originating Materials
Build-up Method	Based on the Value of Originating Materials
COO	certificate of origin
CTC	change in tariff classification
Customs Act	*Customs Act 1901*
Customs (International Obligations) Regulation	*Customs (International Obligations) Regulation 2015*
FTA	free trade agreement
General Rule	All non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System, and the QVC of the good is not less than 35 per cent of the FOB value as per build-up formula or 45 per cent of the FOB value calculated as per build-down formula
HS	Harmonized Commodity Description and Coding System
ICS	Integrated Cargo System
Indian Regulations	*Customs (Indian Rules of Origin) Regulations 2022*
PSR	product specific rule(s) of origin
QVC	qualifying value content
ROO	rule(s) of origin
Tariff Act	*Customs Tariff Act 1995*
Tariff Regulations	*Customs Tariff Regulations 2004*
VNM	value of non-originating materials
VOM	value of originating materials

WO	wholly obtained or produced
Working Tariff	Combined Australian Customs Tariff Nomenclature and Statistical Classification

2 Legislation

2.1 General outline of legislation

2.1.1 The following documents contain the requirements for claiming preferential rates of customs duty under ECTA for goods imported into Australia:

- Combined Australian Customs Tariff Nomenclature and Statistical Classification, commonly known as the 'Working Tariff'
- *Customs Tariff Act 1995* (Tariff Act)
    - Schedule 10A – Indian originating goods
- *Customs Tariff Regulations 2004*
    - Section 5AA – Indian originating goods—prescribed goods
    - Schedule 3A – Indian originating goods
- *Customs Act 1901* (Customs Act)
    - Division 1JA of Part VIII – Indian originating goods
    - Division 4GA of Part VI – Verification powers – Exportation of goods to India.
- *Customs (Indian Rules of Origin) Regulations 2022* (Indian Regulations)
- *Customs (International Obligations) Regulation 2015*
  (the Customs (International Obligations) Regulation)
    - Section 23 – Circumstances for refunds, rebates and remissions of duty

2.2 ECTA treaty text

2.2.1 The most pertinent chapters of ECTA for the purposes of importing or exporting Indian originating goods to or from Australia are the following:

- Chapter 1 – Initial Provisions and General Definitions
- Chapter 2 – Trade in Goods
- Annex 2A — Tariff Commitments
    - Part 2A-1 Notes for Schedule of Australia
    - Part 2A-2 Schedule of Tariff Commitments of Australia
- Chapter 4 – Rules of Origin
    - Annex 4A. Minimum Information Requirements
    - Annex 4B. Product-Specific Rules of Origin

2.2.2 These texts are available under “Australia-India ECTA official text” from the Department of Foreign Affairs and Trade ECTA webpage or as [2022] ATS 8 in the Australian Treaty Series on AustLII.

3 Definitions

3.1 The Customs Act

3.1.1 This Part sets out the important definitions in section 153ZML of the Customs Act that are relevant in determining whether goods are Indian originating goods.

3.1.2 **Agreement** means the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, as amended from time to time.[1]

3.1.3 **aquaculture** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

3.1.4 **Australian originating goods** means goods that are Australian originating goods under a law of India that implements the Agreement.

3.1.5 **certificate of origin** means a certificate that is in force and that complies with the requirements of Article 4.15 of Chapter 4 of the Agreement.

3.1.6 **Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.[2]

3.1.7 **customs value** of goods has the meaning given by section 159 of the Customs Act.

3.1.8 **Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

3.1.9 **Harmonized System** means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

(b) if the table in Annex 4B to Chapter 4 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

3.1.10 **Indian originating goods** means goods that, under this Division, are Indian originating goods.

3.1.11 **indirect materials** means:

(a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or

(b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

(c) fuel (within its ordinary meaning), catalysts and solvents; and

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[1] Note 1: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

[2] Note 2: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

(d) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(e) tools, dies and moulds; and

(f) spare parts and materials; and

(g) lubricants, greases, compounding materials and other similar goods.

3.1.12 **Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

3.1.13 **non-originating materials** means goods that are not originating materials.

3.1.14 **non-party** has the same meaning as it has in Chapter 4 of the Agreement.

3.1.15 **originating materials** means:

(a) Indian originating goods that are used in the production of other goods; or

(b) Australian originating goods that are used in the production of other goods; or

(c) indirect materials.

3.1.16 **production** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

3.1.17 **territorial sea** has the same meaning as in the Seas and Submerged Lands Act 1973.

3.1.18 **territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

3.1.19 **territory of India** means territory within the meaning, so far as it relates to India, of Article 1.3 of Chapter 1 of the Agreement.

4 Rules of origin principles under ECTA

4.1 Goods covered by ECTA

4.1.1 This Agreement covers all goods imported into Australia from India that are Indian originating goods.

4.1.2 Paragraph 16(1)(pa) of the Tariff Act provides that the preferential rate of customs duty for Indian originating goods is 'Free' unless the goods are classified to a heading or subheading in Schedule 3 that is specified in column 2 of an item in the table in Schedule 10A.

4.2 Geographical area covered by the Agreement

4.2.1 The Agreement covers the territories of Australia and India as defined in paragraph 3.1.18 and paragraph 3.1.19 of this Guide.

4.2.2 Article 1.3 of Chapter 1 of the Agreement defines the territory for Australia as:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereignty, sovereign rights or jurisdiction in accordance with international law including the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982;

4.2.3 Article 1.3 of Chapter 1 of the Agreement defines the territory for India as the territory of the Republic of India, in accordance with the Constitution of India, including its land territory, its territorial waters, and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, and/or exclusive jurisdiction, in accordance with its laws and regulations in force, and international law, including the *United Nations Convention on the Law of the Sea*, done at Montego Bay, 10 December 1982.

4.3 Rules of origin and Indian originating goods

4.3.1 ROO are essential for determining whether imported goods are eligible for claiming the preferential rates of duty available under ECTA. ROO define the methods for ascertaining whether a good has undergone sufficient work or processing, or substantial transformation in its production, to obtain the benefits under ECTA. ROO preclude goods made in other countries from obtaining a benefit by merely transiting through Australia or India.

4.3.2 Indian originating goods are those that satisfy the requirements of Division 1JA of Part VIII of the Customs Act and Indian Regulations.

4.3.3 In summary, the following requirements must be met:

- The goods must be Indian originating goods.
- The importer must make a claim for preferential treatment.
- The importer who is claiming preferential treatment must satisfy the documentary requirements to support the claim.
- The goods must meet the consignment provision.

4.3.4 Division 1JA of Part VIII of the Customs Act sets out the ROO for the following categories of goods originating under ECTA:

- goods wholly obtained or produced – Customs Act Section 153ZMM
- goods produced from non-originating materials – Customs Act Section 153ZMN

4.3.5 Goods that fall within the second category under paragraph 4.3.4 must satisfy either

- the applicable PSR as listed in Annex 4B of the Agreement
- or where the goods are not covered by Annex 4B of the Agreement, all non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System, and the QVC of the good is not less than 35 per cent of the FOB value as per build-up formula or 45 per cent of the FOB value calculated as per build-down formula, provided that the final production process of the manufacture of the good is performed within the territory of the exporting Party. This will be referred to in this Guide as the General Rule

4.3.6 A PSR is a rule that must be met for the good to qualify for preferential rates of customs duty. These are covered in detail in Section 6 of this Guide. The PSRs that apply in the ECTA PSR are:

- CTC
- QVC
- Specific process rules

4.3.7 Non-originating goods are those that:

- originate from outside the Parties to the Agreement
- are produced in a Party but fail to meet the ROO
- are of undetermined origin.

4.4 Harmonized Commodity Description and Coding System

4.4.1 ECTA PSR and tariff commitments are based on the HS. The HS is a structured nomenclature that organises goods according to the degree of production and assigns them numbers known as tariff classifications. ECTA PSR and tariff commitments were finalised in the version of the HS that commenced for Australia on 1 January 2017 (HS 2017).

4.4.2 HS 2017 is arranged into 97 Chapters (including the blank Chapter 77), covering all products. **Chapters** are divided into headings. **Headings** are divided into subheadings. **Subheadings** are divided into tariff classifications by each country. As shown in the example below, Chapters are identified by a two-digit number. A heading is identified by a four-digit number, a subheading is identified by a six-digit number, and the tariff classifications for goods imported into Australia are eight digits in length. India also uses eight digits for their tariff classifications.

4.4.3 Subheadings provide more specific descriptions than headings. Headings provide more specific descriptions than Chapters. The HS is internationally standardised at the six-digit subheading level.

Example: Harmonized System of Tariff Classification

Chapter 07	Edible vegetables and certain roots and tubers
Heading 0703	onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled:
Subheading 0703.20	Garlic

4.4.4 Under the HS, Chapters, headings, and subheadings are identical in all that use the same version (that is year of issue) of the HS. Additional digits of the tariff classification beyond the sixth digit are set by each country, and therefore vary between countries. In Australia, these final two digits of the eight-digit number are referred to as ‘domestic splits’ or ‘domestic subheadings’.

4.4.5 Goods covered by Schedule 10A of the Tariff Act are in HS 2022 nomenclature, which is the nomenclature for Australia’s working tariff as of 1 January 2022.

4.4.6 As the ECTA PSR Schedule was negotiated in the 2017 version of the HS, as a first step, Australian Importers need to determine the HS classification of the imported good (up to the six-digit level) in HS 2017 and use that classification to find the specific PSR for that classification in Annex 4B of the Agreement.

4.4.7 An important difference between this and other FTAs is its use of a ‘general PSR rule’. This means that where a good is not listed in Annex 4B of the Agreement, the General Rule is applicable to that good. In order to assist importers to classify their goods in the correct nomenclature, HS 2017 can be found on the ABF HS 2017 website.

4.4.8 If the good meets the PSR or General Rule and all other relevant requirements (such as the consignment provision in Section 15ZMQ of the Customs Act), it is an originating good under ECTA. It is the first six digits of that HS Code that will appear on the Certification of Origin, if one is provided.

4.4.9 Importers need to determine the HS classification of the imported good in HS 2022 (up to the eight digit level) and use that classification to determine the preferential rate in Schedule 10A to the Tariff Act. It is that classification that will need to appear on the import declaration.

4.4.10 Further information on HS 2022 and the application to PSRs can be found in ACN 2022/52.

4.5 Other concepts in ROO

4.5.1 Section 7 of this Guide explains a number of important ROO concepts that may be applicable when determining the origin of an imported good:

- Accessories, spare parts, tools or instructional or other information materials (see section 7.1)
- Accumulation (see section 7.2)
- Consignment provision (see section 7.3)
- De minimis provision (see section 7.4)
- Fungible goods or materials (see section 7.5)
- Indirect materials (see section 7.6)
- Non-qualifying operations (see section 7.7)
- Packaging materials and containers (see section 7.8)

5 Goods wholly obtained or produced

5.1 Outline

5.1.1 Section 153ZMM of the Customs Act contains provisions relating to goods that are wholly obtained or produced in India or in India and Australia.

Section 153ZMM of the Customs Act: Goods wholly obtained or produced in India or in India and Australia

(1) Goods are ***Indian originating goods*** if:

(a) they are wholly obtained or produced in India or in India and Australia; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certificate of origin for the goods.

(2) Goods are ***wholly obtained or produced in India or in India and Australia*** if, and only if, the goods are:

(a) plants, or goods obtained from plants, that are grown and harvested, picked or gathered in the territory of India or in the territory of India and the territory of Australia (including fruit, flowers, vegetables, trees, seaweed, fungi, algae and live plants); or

(b) live animals born and raised in the territory of India or in the territory of India and the territory of Australia; or

(c) goods obtained from live animals referred to in paragraph (b); or

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of India; or

(e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in the territory of India; or

(f) fish, shellfish or other marine life extracted or taken from the sea, seabed or subsoil beneath the seabed:

(i) beyond the outer limits of the territory of India and the territory of Australia; and

(ii) in accordance with international law, outside the territorial sea of non parties;

by vessels that are registered, listed or recorded with India and are entitled to fly the flag of India; or

(g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered, listed or recorded with India and is entitled to fly the flag of India; or

(h) goods, other than fish, shellfish or other marine life, extracted or taken from the seabed or subsoil beneath the seabed outside the territorial sea of India, by India, but only if India has the right to exploit that seabed or subsoil in accordance with international law; or

(i) waste and scrap that has been derived from production or consumption in the territory of India and that is fit only for the recovery of raw materials or for recycling purposes; or

(j) goods produced in the territory of India, or in the territory of India and the territory of Australia, exclusively from the following:

(i) goods referred to in paragraphs (a) to (i) or their derivatives;

(ii) Australian originating goods of a kind covered by subparagraph (a) of Article 4.2 of Chapter 4 of the Agreement or their derivatives.

5.1.2 In order for a good to be considered an Indian originating good, the importer must have supporting documentation at the time preferential treatment is sought.

5.1.3 Refer to Section 9 of this Guide for information on record keeping obligations.

5.1.4 Waste and scrap can qualify as an Indian originating good under Paragraph 153ZMM(2)(i) of the Customs Act, if they are derived from either production or consumption in a Party and are fit only for the recovery of raw materials or recycling.

Example: waste and scrap

Rubber is imported into India from Malaysia and used in the production of automotive rubber tubes and seals. The unused scrap rubber from the production of the tubes and seals is exported to Australia.

As the unused scrap rubber is derived from production processes in India, it fits the definition of waste and scrap and is considered to be “wholly obtained or produced” under paragraph 153ZMM(2)(i) of the Customs Act. Therefore, the scrap rubber qualifies as an Indian originating good and may claim preferential rates of customs duty, if all other requirements of the Agreement are met.

Example: waste and scrap

Used tyres of undetermined origin are collected within the Australia to be turned into rubber crumb in India for use in athletic and playground surfaces.

As the unused tyres are collected in the Australia as a result of consumption in Australia and fit only for the recovery of raw materials, it fits the definition of waste and scrap and is considered to be “wholly obtained or produced” under subparagraph 153ZMM(2)(i) of the Customs Act. Therefore, the used tyres qualifies as a Australian originating good and may claim preferential rates of customs duty, if all other requirements of the Agreement are met.

6 Goods produced from non-originating materials

6.1 Outline

6.1.1 Section 153ZMN of the Customs Act contains provisions that apply to goods, produced in India or in India and Australia, and that incorporate non-originating materials.

Section 153ZMN of the Customs Act: Goods produced in India, or in India and Australia, from non-originating material

(1) Goods are ***Indian originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4B to Chapter 4 of the Agreement; and

(b) they are produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) either:

(i) the goods satisfy the requirements applicable to the goods in that Annex; or

(ii) the goods satisfy the requirements under subsection (3); and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certificate of origin for the goods.

(2) Without limiting subparagraph (1)(c)(i), a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

(3) Goods satisfy the requirements under this subsection if:

(a) all non-originating materials used in the production of the goods have undergone a change in tariff classification at the tariff subheading level; and

(b) the goods satisfy the qualifying value content requirements prescribed by regulations made for the purposes of this paragraph; and

(c) the final production process of the manufacture of the goods is performed in the territory of India.

Change in tariff classification

(4) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(5) If:

(a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

(b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if:

(c) in the case of goods classified to any of Chapters 50 to 63 of the Harmonized System—the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or

(d) otherwise—the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

Qualifying value content

(6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

(a) the qualifying value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or

(b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and

(d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the following:

(e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods;

(f) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZML(2).

153ZMO of the Customs Act: Non-qualifying operations

(1) Goods are not Indian originating goods under this Subdivision merely because of the following operations:

(a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;

(b) packaging or presenting the goods for transportation or sale;

(c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;

(d) for goods that are textiles—attaching accessory articles (including straps, beads, cords, rings and eyelets) to the goods or ironing or pressing the goods;

(e) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;

(g) disassembly of products into parts;

(h) slaughtering (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of animals;

(i) simple painting or polishing operations;

(j) simple peeling, stoning or shelling;

(k) simple mixing (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of goods, whether or not of different kinds;

(l) any combination of things referred to in paragraphs (a) to (k).

(2)	For the purposes of this section, ***simple*** has the same meaning as it has in Article 4.7 of Chapter 4 of the Agreement.

6.1.2 Section 153ZMN of the Customs Act sets out the rules for determining whether a good is an Indian originating good if the good incorporates non-originating materials in its production process in a Party.

6.1.3 In determining whether goods are produced in one or more of the Parties, the definitions in subsections 153ZML(2), (3) and (4) should also be considered, as stated below:

Value of goods

(2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

Tariff classifications

(3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

6.1.4 The Indian Regulations prescribe the rules for the determination of value and the tariff change and qualifying value content requirements for the purposes of for the purposes of section 153ZMN and subsections 153ZML(2) and (3) of the Customs Act.

6.1.5 Subsection 4(3A) of the Customs Act defines tariff classification with respect to the Tariff Act. Subsection 153ZML(4), however, provides that subsection 4(3A) does not apply for the purposes of this Division. This means that the tariff classification for the purposes of Division 1JA of the Customs Act, is the PSR set out in Annex 4B of the Agreement.

6.1.6 Therefore, when determining the PSR that applies to a good the relevant nomenclature for the classification of the goods is HS 2017 as found in Annex 4B of the Agreement, while for the import declaration goods should be classified in the HS 2022 tariff nomenclature as found in Schedule 3 of the Customs Tariff Act.

6.1.7 Goods are Indian originating goods if all the requirements of subsection 153ZMN(1) of the Customs Act have been met. The requirements of this subsection are that:

- The goods are produced entirely in a Party from non-originating materials only or from a combination of non-originating materials and originating materials.
- Where the goods are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4B of the Agreement.
  - The goods satisfy the product specific rule applicable to the goods in that Annex.
- Where the goods are not classified to a Chapter, heading or subheading of the Harmonized System covered in the table in Annex 4B of the Agreement.
  - The goods satisfy the requirements of the General Rule set out in section 153ZMN(3) of the Customs Act.
- The importer of the goods has a COO in relation to the goods at the time the goods are imported.

6.1.8 Annex 4B of the Agreement includes eight different PSRs that must be met in order for goods incorporating non-originating material to claim preferential rates of customs duty under ECTA. Columns one through three of the Table in Annex 4B of the Agreement list the tariff classifications of goods at the Chapter, heading and subheading level based on HS 2017. Column 4 sets out the description of the good. Column 5 sets out one of the eight PSRs against a subheading:

- WO (501 subheadings)
- CC (145 subheadings)
- CTH (11 subheadings)
- CC except HS 2 and 3 (8 subheadings)
- CC or QVC40 (3 subheadings)
- WO or QVC40 (2 subheadings)[3]
- CTSH + QVC 1.5% (9 subheadings)[4]
- Melt and pour in the Parties (128 subheadings)

6.1.9 Section 153ZMN(2) of the Customs Act provides that a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given meaning for the purposes of that Annex. The following abbreviations apply:

- (a) **WO** means that good must be wholly obtained in the territory of one or both of the Parties within the meaning of Article 4.4 (Wholly Obtained or Produced Goods – Rules of Origin);
- (b) **CC** means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the two-digit level;
- (c) **CTH** means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level;
- (d) **CTSH** means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the six-digit level;
- (e) **QVC (X)** means that the good must have a qualifying value content as calculated under Article 4.6 (Calculation of Qualifying Value Content – Rules of Origin) of not less than (X) per cent whether using the build-up method or build-down method; and
- (f) **melt and pour** in one or both of the Parties means that the product must have been melted and poured in one or both of the Parties wherein the raw material is first produced

[3] For the purpose of administering this PSR, the ABF will treat it as QVC40 as all goods are separately able to make use of Article 4.4 (Wholly Obtained or Produced Goods – Rules of Origin) of the Agreement.

[4] For the purpose of administering this PSR, the ABF will treat it as if it is CTSH + QVC1.5 to ensure it has practical meaning under the Agreement.

in an iron or steel-making furnace in a liquid state, and then poured into its first solid shape.

6.1.10 For Chapter 50 and 52, if a claim for origin is based on dyeing, printing and at least two subsequent finishing processes, washing or drying shall not be considered to be finishing processes.

6.2 The General Rule

6.2.1 Where a Chapter, heading or subheading is not provided for in the table to Annex 4B of the Agreement, the General Rule applies. This means that if your good's tariff classification is not among the goods classified in Annex 4B, that good will need to satisfy the requirements set out in the General Rule if you are to claim preferential tariff treatment. This covers some 4,578 subheadings in HS2017 which can be found on the ABF HS2017 website or the WCO HS2017 website.

6.2.2 The General Rule is set out in subsection 153ZMN(3) of the Customs Act and section 6 of the Indian Regulations. It requires the non-originating materials to have undergone a change at the sub-heading level and the QVC of the good is not less than 35 per cent of the FOB value as per build-up formula or 45 per cent of the FOB value calculated as per build-down formula provided that the final production process of the manufacture of the goods is performed within the territory of the exporting Party.

6.2.3 Effectively, the General Rule is a CTSH and either QVC(35) using the build-up method or QVC45 using the build-down method.

6.3 Examples of PSRs that appear in Annex 4B of ECTA

PSR – WO

A WO rule requires that no non-originating materials be used to make the final good. These are goods that would generally be wholly produced or obtained within a party (See Section 5) although the Agreement allows for the good to have been obtained in one or both of the Parties.

For example, pure-bred horses of subheading 0101.21 has a PSR of WO.

As a horse must have been born and raised in a Party there is no need for a PSR for these goods. As a result of this, the ECTA lists these type of goods as WO. In this case WO is therefore strictly speaking not a PSR but a description of the nature of the good.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
CHAPTER 1			**LIVE ANIMALS**	
1	**0101**		**Live horses, asses, mules and hinnies**	
1		0101.21	- Horses: pure-bred breeding animals	WO

PSR – CTC

A CTC rule will require all non-originating materials to have undergone a change in Chapter, heading or subheading to make the final good originating. This rule is subject to the *de minimis* provisions in Section 7.4.

For example, fish oils of subheading 1504.20 has a PSR of CC which means that all non-originating materials used in the production of the good have undergone a CTC at the two digit level of the Harmonized System.

This means non-originating material used to make the fish oil of 1504.20 must come from any Chapter, other than Chapter 15.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
CHAPTER 15			**ANIMAL OR VEGETABLE FATS AND OILS AND THEIR CLEAVAGE PRODUCTS; PREPARED EDIBLE FATS; ANIMAL OR VEGETABLE WAXES**	
15	**1504**		**Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified**	
15		1504.20	- Fats and oils and their fractions, of fish, other than liver oils	CC

PSR – CTC except from certain tariff classifications

A CTC rule with exceptions will require non-originating materials to have undergone a change in Chapter, heading or subheading, except from certain tariff classifications - as indicated in column 5 of the table at Annex 4B - to make the final good.

For example, sausages of subheading 1601.00, the PSR for goods under heading 1601.00 is a CC except from Chapter 2 and 3 which means that all non-originating materials used in the production of the good have undergone a CTC at the two digit level of the Harmonized System, except for materials of Chapter 2 or 3.

This means that the non-originating materials used to make sausages of 1601.00 cannot come from Chapters 2 or 3 but can come from any other Chapter.

In the case where, for example, beef or pork meat (Chapter 2) or fish meat (Chapter 3) that is an Indian originating good or Australian originating good is used, this would count as an originating material for the purposes of meeting this PSR and is not subject to such an exclusion.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
CHAPTER 16			**PREPARATIONS OF MEAT, OF FISH OR OF CRUSTACEANS, MOLLUSCS OR OTHER AQUATIC INVERTEBRATES**	
16	**1601**	**1601.00**	**Sausages and similar products, of meat, meat offal or blood; food preparations based on these products**	**CC except HS 2 and 3**

PSR – QVC only

For some goods, the only PSR available is that the good meets a particular QVC threshold. For instance, QVC40 means that the good must have a QVC of no less than 40 per cent as calculated in accordance with the Indian Regulations.

For example, the PSR for *mixed spices* of Subheading 0910.91 is WO[5] or QVC40.

This means that the QVC of the good must be greater than or equal to 40 per cent.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
CHAPTER 9			**COFFEE, TEA, MATÉ AND SPICES**	
9	**0910**		**Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices**	
9		0910.91	- Other spices: mixtures referred to in Note 1 (b) to this Chapter	WO or QVC40
9		0910.99	- Other spices: other	WO or QVC40

[5] For the purpose of administering this PSR, the ABF will treat it as QVC40 as all goods are able to make use of Article 4.4 (Wholly Obtained or Produced Goods – Rules of Origin) of the Agreement.

PSR – CTC or QVC

Some PSRs allow for the option of meeting either a CTC or a QVC rule.

The rule may require a CTC from non-originating materials to the final good at the Chapter, heading or subheading level or it may require that the good meets a particular QVC.

For example, for frozen mixed vegetables of subheading 0710.90, the PSR is CC or QVC40.

This means that the non-originating material used to make mixed vegetables of 0710.90 must come from any Chapter other than Chapter 7, or the QVC of the good must be greater than or equal to 40 per cent.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
CHAPTER 7			**EDIBLE VEGETABLES AND CERTAIN ROOTS AND TUBERS**	
7	**0710**		**Vegetables (uncooked or cooked by steaming or boiling in water), frozen**	
7		0710.90	- Mixtures of vegetables	CC or QVC40

PSR – CTC and QVC

For a number of products the PSR may require meeting a CTC and a QVC rule.

For example, for silver bracelets of subheading 7113.11, the PSR is CTSH + 1.5%[6] which means that all non-originating materials used in the production of the good have undergone a CTC at the six digit level of the Harmonized System and the goods must have a QVC greater than or equal to 1.5 per cent.

That is, in order to be originating, non-originating material must undergo a change in tariff classification at the six digit level and the QVC for the goods must be more than or equal to 1.5 per cent.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
71	**7113**		**Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal**	
71		7113.11	- Of precious metal whether or not plated or clad with precious metal: of silver, whether or not plated or clad with other precious metal	CTSH + QVC 1.5%

[6] For the purpose of administering this PSR, the ABF will treat it as if it is CTSH + QVC1.5 to ensure it has practical meaning under the Agreement.

PSR – Melt and pour in the Parties

For a number of products the PSR provides goods are originating if they undergo a process of melt and pour in the Parties.

For example, for bars and rods of free-cutting steel in irregularly wound coils, the PSR is melt and pour in one or both of the parties. This means that all non-originating material must have been melted and poured in the territory of Australia or India, or both territories. The raw material must have been produced in an iron or steel making furnace in a liquid state (melted) and then poured into its first solid shape in the territory of India or Australia.

Column 1	Column 2	Column 3	Column 4	Column 5
Chapter	**Tariff Heading**	**Tariff Sub-Heading**	**Product Description**	**Agreed PSR proposal**
72	**7213**		**Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel**	
72		7213.10	- Containing indentations, ribs, grooves or other deformations produced during the rolling process	Melt and pour in the Parties
72		7213.20	- Other, of free-cutting steel	Melt and pour in the Parties

6.4 Change in tariff classification

6.4.1 Subsection 153ZMN(4) of the Customs Act states that the regulations may prescribe that all non-originating material used in the production of a good must have undergone a particular CTC. This is set out in Part 2, Section 5 of Indian Regulations.

6.4.2 The CTC concept applies only to non-originating materials. This means that all non-originating materials must come from a different subheading, heading or Chapter than the final good, depending on the CTC rule.

6.4.3 In other words, the tariff classification of the final good (after the production process) must be different to the tariff classification of each non-originating material used in the production of the good. This approach ensures that non-originating materials incorporated into a good have undergone substantial transformation to support a claim that a good is an Indian originating good.

6.4.4 It may be possible for goods to be Indian originating goods in cases where not all of the non-originating materials have undergone the required CTC, provided the *de minimis* provision has been met. A detailed explanation of the *de minimis* provision is in paragraph 7.4 of this Guide

Example : CTC rule

Gnocchi pasta (subheading 1902.11) is made in India from potatoes (subheading 0701.10) and wheat flour (heading 1101) imported from Germany, salt (heading 2501) from Australia and eggs (subheading 0407.21) from India.

The PSR for a good of subheading 1902.11 is a CTC at the chapter level: CC.

The CTC rule requires that all the non-originating materials that go into the making of the gnocchi pasta must be classified outside of Chapter 19.

As the potatoes and wheat flour are classified to Chapter 7 and 11, respectively, these non-originating materials meet the CTC requirement. Since Australia and India produced the salt and eggs, respectively, these are originating materials, which are not required to undergo the CTC test.

The gnocchi pasta is therefore an Indian originating good.

6.5 Qualifying Value Content (QVC)

6.5.1 Subsection 153ZMN(6) of the Customs Act states that the QVC of goods is to be worked out in accordance with the regulations.

6.5.2 Part 3 of the Indian Regulations sets out two methods for calculating QVC. There is no requirement to use one method in favour of another; that is, it is at the discretion of the person applying for the certificate of origin to decide which method to use.

6.5.3 In all cases, the QVC must be expressed as a percentage.

6.5.4 Materials of undetermined origin are treated as non-originating materials.

6.5.5 In ECTA there are two different calculations available to importers to determine the QVC.

- The build-up method is based on the value of originating.
- The build-down method is based on the value of non-originating material.

6.5.6 Although these are alternative calculations, it is up to the businesses involved to decide which method to use and it is only necessary to establish that goods meet the QVC requirement of the calculation chosen.

6.5.7 Article 4.6 of Chapter 4 of the Agreement sets out that the value of production on non-originating materials undertaken in one or both Parties to the Agreement, and the value of originating materials used in the production of non-originating material in the territory of one or both Parties by one or more producers is to be added to the value of originating materials for the purpose of calculating the QVC.

6.5.8 These additions have the effect of increasing the value of originating material under the build-up method and therefore making it more likely that the good will meet the QVC and therefore be originating. They however cannot be deducted from the value of non-originating material or used to change the QVC calculated under the Build-Down Formula.

6.5.9 The use of the build-up calculation is therefore particularly useful where labour costs, overhead and other costs and profit form a large proportion of the value of the good.

6.5.10 As the formula allow for different additions and deductions they may not result in the same QVC value.

6.5.11 The build-up method may be simpler from a record keeping perspective as it is only necessary to demonstrate the value of some or all of the originating material, labour cost, overheads cost, profit and other cost is sufficient for the calculation to exceed the QVC.

6.5.12 In the case of the build-down method, materials that are of an undetermined origin are treated as non-originating materials, meaning that it will be necessary to determine the value of non-originating materials, originating materials, direct labour cost, direct overheads cost, profit and other cost that forms up the remaining expenses in the production of the good.

6.5.13 ECTA has limited provisions on cumulation which are covered in Section 7.2 of this Guide.

6.5.14 Section 9 of the Indian Regulations sets out that the costs that may be deducted from the value of non-originating materials or included in the value of originating materials for the purpose of determining the QVC.

Section 9 of the Indian Regulations: Value of goods that are originating materials or non-originating materials

(1) For the purposes of subsection 153ZML(2) of the Act, this section explains how to work out the value of originating materials or non-originating materials used in the production of goods.

(2) The value of the materials is as follows:

(a) for materials imported into the territory of India by the producer of the goods:

(i) the price paid or payable for the materials at the time of importation; or

(ii) if the value of the materials cannot be determined under subparagraph (i)—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;

(b) for materials acquired in the territory of India—one of the following chosen by the importer of the goods:

(i) the price paid or payable for the materials by the producer of the goods;

(ii) the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the territory of India by the producer of the goods;

(iii) the earliest ascertainable price paid or payable for the materials in the territory of India;

(c) for materials that are produced by the producer of the goods—all the costs incurred in the production of the materials, including general expenses.

(3) For the purposes of paragraph (2)(a), in working out the value of particular materials, the costs of insurance and freight incurred in delivering the materials to the port of importation in India must be included.

(4) In working out the value of particular originating materials under subsection (2), the following may be included, to the extent that they have not been taken into account under that subsection:

(a) the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of the territory of India and the territory of Australia; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable; e cost of insurance related to that freight.

(c) the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.

(5) In working out the value of particular non originating materials under subsection (2), the following may be deducted:

(a) the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of the territory of India and the territory of Australia; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.

6.5.15 **Build-Down Method** (Part 3, Section 7 of the Indian Regulations)

$$\frac{\text{Customs value} - \text{Value of non-originating materials}}{\text{Customs value}} \times 100$$

where:

customs value means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act.

Value of non-originating material means the value, worked out under Part 4 of the Indian Regulations, of the non-originating materials used in the production of the goods.

Example: Build-Down Method calculation

An Indian producer sells a good to an Australian importer for $50. The value of non-originating materials used in the good is $28.

The producer calculates the QVC using the Build-Down Method as follows:

$$\frac{\text{Customs value} - \text{Value of non-originating materials}}{\text{Customs value}} \times 100$$

$$= \frac{\$50 - \$28}{\$50} \times 100$$

$$= 44 \; per \; cent$$

Therefore, the QVC of the good is 44 per cent and for it to meet the PSR, the QVC requirement would have to be no less than 44 per cent.

6.5.16 **Build-Up Method** (Part 3, Section 8 of the Indian Regulations):

$$\frac{\text{Value of Originating materials}}{\text{Customs value}} \times 100$$

where:

customs value means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

value of originating materials means the value, worked out under Part 4 of the Indian Regulations, of the originating materials used in the production of the goods.

Example: Build-Up Method calculation

An Indian producer sells a good to an Australian importer for $300. The value of originating materials used in the good is $280.

The producer calculates the QVC using the Build-Up Method as follows:

$$\frac{\text{Value of Originating materials}}{\text{Customs value}} \times 100$$

$$= \frac{\$280}{\$300} \times 100$$

$$= 93.33 \; per \; cent$$

Therefore, the QVC of the good is 93.33 per cent and if the QVC requirement is 93 per cent or more, the good would be originating.

7 Other originating goods provisions

7.1 Accessories, spare parts, tools or instructional or other information materials

7.1.1 Section 153ZMN(7) of the Customs Act and Section 10 of the Indian Regulations set out the treatment that applies to accessories, spare parts, tools or instructional or other information materials in respect of goods imported into Australia that must comply with a QVC rule.

7.1.2 In such a situation, these materials must be taken into account as non-originating or originating materials, as the case may be, in working out the QVC.

Subsections 153ZMN(7) of the Customs Act

(7) If:

(a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and

(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

(c) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and

(d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the following:

(e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods;

(f) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZML(2).

Part 4, Section 10 of the Indian Regulations – Value of accessories, spare parts, tools or instructional or other information materials

If paragraphs 153ZMN(7)(a), (b), (c) and (d) of the Act are satisfied in relation to goods:

(a) the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account for the purposes of working out the qualifying value content of the goods under Part 3 of this instrument; and

(b) if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of sections ^8 and ^9 of this instrument, those accessories, spare parts, tools or instructional or other information materials must be taken into account as originating materials used in the production of the goods; and

(c) if the accessories, spare parts, tools or instructional or other information materials are non-originating materials—for the purposes of sections ^7 and ^9 of this instrument, those accessories, spare parts, tools or instructional or other information materials must be taken into account as non-originating materials used in the production of the goods.

7.2 Accumulation

7.2.1 Accumulation permits the inclusion of either originating materials or the proportion of 'originating' production in non-originating materials, into the process of determining whether a final good is originating.

7.2.2 Under ECTA, goods and materials originating in a Party that are incorporated into the production of another, final good in the other Party shall qualify as originating in the Party in which production of the final good occurred when determining whether that good is originating.

7.2.3 For example, if Australian originating goods or materials were used in the production of a good in the territory of India, the Australian goods would be originating materials in the production of the final good in India.

7.2.4 Article 4.5 of ECTA sets out the principles that apply to goods manufactured in a Party from goods originating in another Party.

Article 4.5 of Chapter 4 of the Agreement: Accumulation

Goods and materials originating exclusively in the territory of a Party under the terms of this Agreement, and incorporated in the production of a good in the territory of the other Party shall be considered to originate in the territory of the other Party.

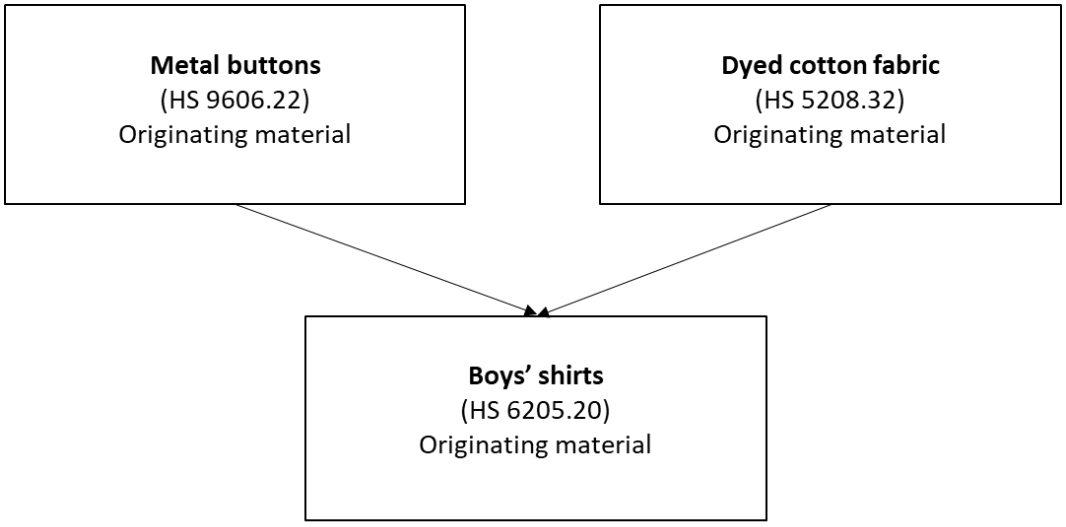
7.2.5 At the time the goods are imported, the importer must also have the supporting document in relation to the goods. Refer to Section 8 of this Guide for further information.

Example: Goods produced in India using a combination of Indian originating materials

An Indian producer imports metal buttons from Australia. These were made in Australia from metal that was produced and shaped here and satisfy the ECTA PSR for that good. These goods are therefore wholly produced and are Australian originating. When imported into India, they are originating materials for the purposes of production of goods in the territory of India.

The Indian producer buys dyed cotton fabric from another Indian producer. This material was produced in the territory of India from originating materials and is originating.

The metal buttons are used along with the dyed fabric and other originating materials to make boys' shirts.



The finished shirts will be Indian originating goods if they satisfy qualifying value content requirements.

CTC rule

7.2.6 Subsection 5(a) and (b) of the Indian Regulations provide that a final good satisfies its CTC rule if all of the non-originating materials used in its production have undergone the necessary CTC rule. The only exception to this rule is *de minimis* provisions that permits some of the non-originating materials to remain so and for the good to be originating.

7.2.7 Subsections 5(a) and (b) of the Indian Regulations provide that a final good satisfies the CTC rule if each of the non-originating materials used in its production, which do not satisfy the CTC rule, are produced from non-originating materials that satisfy the CTC rule for the final good.

7.2.8 Materials that are Indian originating goods do not need to meet the CTC requirements as this applies exclusively to non-originating materials.

Part 2, Section 5 of the Indian Regulations - Change in tariff classification requirement for non-originating materials

For the purposes of subsection 153ZMN(4) of the Act, a non-originating material used in the production of goods that does not satisfy a particular change in tariff classification is taken to satisfy the change in tariff classification if:

(a) it was produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from other non-originating materials; and

(b) each of those other non-originating materials satisfies the change in tariff classification, including by one or more applications of this section.

Example: CTC rule – each non-originating material meeting the CTC rule

This example considers a good manufactured entirely in India. The diagram relates to the repeated application of Section 5 of the Indian Regulations to determine whether a good (the final good) imported into Australia satisfies the relevant CTC rule. The final good is made in the exporter's factory from a range of originating and non-originating materials, including Non-originating Material 1 and Non-originating Material 2. Non-originating Material 1 satisfies the CTC rule for the final good but Non-originating Material 2 does not.

Originating materials used in the production of this good are not included in the diagram as originating materials do not need to meet the CTC requirement or any other PSR which only applies to non-originating materials.

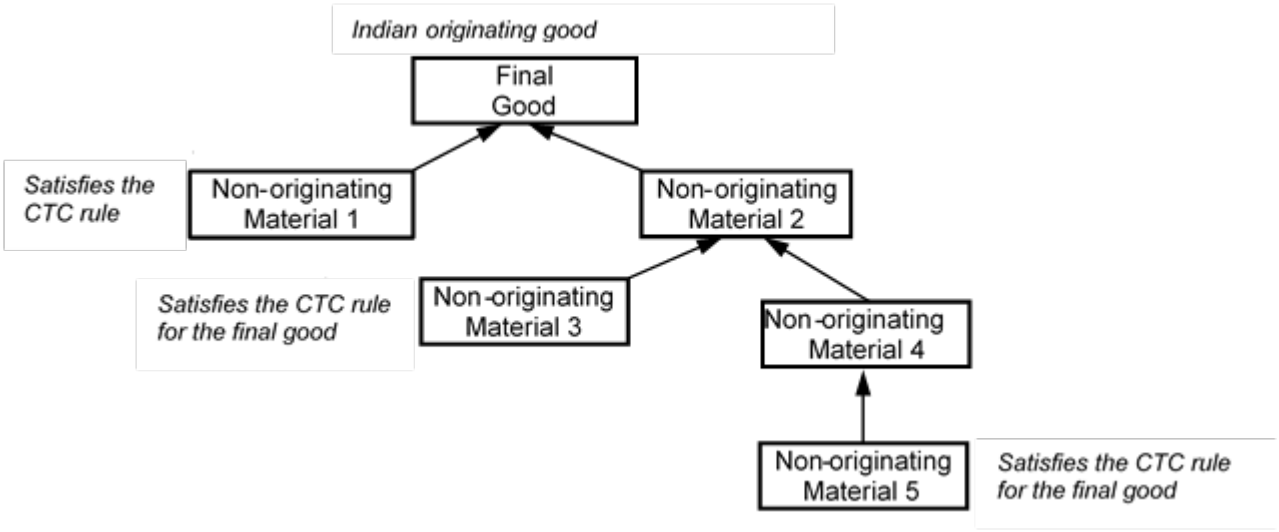
All non-originating materials must meet the CTC rule (see the *de minimis* provisions in Section 7.4) for the final good to be an Indian originating good. Therefore, in this example, without the ability to accumulate, the final good would be non-originating because it was made using a non-originating material (Non-originating Material 2) that failed to meet the CTC rule.

Subsection 5(b) of the Indian Regulations provides that the materials that went into making Non-originating Material 2 can also be used to determine whether the final good meets the CTC rule. In this case, the exporter purchased Non-originating Material 2 from an Australian supplier who provided the necessary information that the goods were made from several materials, including two non-originating materials: Non-originating Material 3 and Non-originating Material 4.

Subsection 5(b) of the Indian Regulations allows for the repeated application of Section 5. If Non-originating Material 3 and Non-originating Material 4 met the CTC rule, i.e. they meet the CTC rule for the final good, then the good would be originating. However if non-originating Material 3 satisfies the CTC rule in relation to the final good but Non-originating Material 4 does not, then, as done with Non-originating Material 2, it is possible to repeat the process of examining the materials that went into making Non-originating Material 4. In this example, the only non-originating material used in the production of Non-originating Material 4 is Non-originating Material 5, which satisfies the CTC rule for the final good.

As a result of the repeated application of Section 5 all the non-originating materials, including non-originating materials 2 and 4 are now originating, i.e they meet the CTC rule for the final good, and therefore the final good is an Indian originating good for the purposes of ECTA.

Origin determination using Section 5 of the Indian Regulations



Note: The exporter would need to obtain documentary evidence regarding the production process, the materials used, and other relevant information regarding the production of Non-originating Material 2 and Non-originating Material 4 from the suppliers of those products.

QVC rule - how it works in an accumulation context

7.2.9 Section 9 of the Indian Regulations specifies how the value of materials is determined for the purpose of calculating QVC. The section also provides for the costs that can be added to the value of originating materials and deducted from the value of non-originating materials.

7.2.10 Article 4.6 of ECTA provides that where non-originating materials are used in the production of a good, the value of production on the non-originating material used in the final good can be added to the value of originating materials for the purposes of determining if a good meets the QVC requirement. This may only occur if the production occurred in the territory of India or the territory of India and territory of Australia, but may occur regardless if production was undertaken by one or more producers in either territory.

7.2.11 Subsection 153ZMN(6)(a) of the Customs Act provides that the qualifying value content of the goods is to be worked out in accordance with the Agreement, unless the regulations prescribe how to work out the qualifying value content of the goods.

7.2.12 The value of originating materials used in the production of a non-originating material that is then used in the production of a good can also be added to the value of originating materials for the purposes of determining QVC, if production on the non-originating material occurred in India or the territory of India and territory of Australia.

Part 4, Section 9 of the Indian Regulations - Value of goods that are originating materials or non-originating materials

(1) For the purposes of subsection 153ZML(2) of the Act, this section explains how to work out the value of originating materials or non-originating materials used in the production of goods.

(2) The value of the materials is as follows:

(a) for materials imported into the territory of India by the producer of the goods:

(i) the price paid or payable for the materials at the time of importation; or

(ii) if the value of the materials cannot be determined under subparagraph (i)—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;

(b) for materials acquired in the territory of India—one of the following chosen by the importer of the goods:

(i) the price paid or payable for the materials by the producer of the goods;

(ii) the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the territory of India by the producer of the goods;

(iii) the earliest ascertainable price paid or payable for the materials in the territory of India;

(c) for materials that are produced by the producer of the goods—all the costs incurred in the production of the materials, including general expenses.

(3) For the purposes of paragraph (2)(a), in working out the value of particular materials, the costs of insurance and freight incurred in delivering the materials to the port of importation in India must be included.

(4) In working out the value of particular originating materials under subsection (2), the following may be included, to the extent that they have not been taken into account under that subsection:

(a) the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of the territory of India and the territory of Australia; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.

(5) In working out the value of particular non-originating materials under subsection (2), the following may be deducted:

(a) the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of the territory of India and the territory of Australia; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.

Example: Calculating QVC using materials processed in Australia

An Indian company produces a vanilla and cinnamon spice mixture (HS Code 0910.91).

Dry cinnamon bark (0906.11) is sourced from Sri Lanka and processed in Australia into ground cinnamon (0906.20) before being exported to the Indian company.

Vanilla pods (0905.10) from Madagascar are processed to make a vanilla bean powder in India by the Indian company before they are incorporated into the final spice mix.

Australian manufacturer's per unit cost

	Total	VOM	VNM
Non-originating materials (0906.11)	$5.00		$5.00
Originating materials	$0.00	$0.00	
Labour	$0.50	$0.50	
Other costs	$0.30	$0.30	
Profit	$0.20	$0.20	
VALUE	**$6.00**	**$1.00**	**$5.00**

The PSR for ground cinnamon of HS 0906.20 is WO. As such, good does not meet the PSR since there are non-originating materials used in the production.

As the goods are not Australian originating goods when imported into India, the $1.00 of value added in Australia is lost. This means that the entirety of the $6.00 is treated as a non-originating material.

However, under Article 4.6 of the Agreement, the value of production on non-originating material undertaken in the territory of one or both of the parties is counted as originating material for the purpose of determining the QVC of the good. It is not deducted from the value of non-originating material.

Indian manufacturer's per unit cost for producing final good

	Total	VOM	VNM
Non-originating material – Vanilla Pods (0905.10)	$5.00		$5.00
Non-originating materials – Ground Cinnamon (0906.20)	$6.00		$6.00

Originating materials	$0.00	$0.00	
India - Labour	$3.50	$3.50	
India - Other costs	$1.00	$1.00	
India - Profit	$2.50	$2.50	
Australia - Labour	*	$0.50	
Australia - Other costs	*	$0.30	
Australia - Profit	*	$0.20	
VALUE	**$18.00**	**$8.00**	**$11.00**

* This value is only added to the value of originating material – it is not deducted from the value of non-originating materials. This results in a form of double-counting to the detriment of the build-down formula.

The PSR for crushed or ground vanilla of HS 0905.20 is WO. As such, the good does not meet the PSR since non-originating material is used in the production of the vanilla bean powder. This means that the material will be treated as a non-originating material in calculating the QVC of the final good.

The PSR for vanilla and cinnamon spice mixture of HS Code 0910.91 is QVC40.

The QVC can be calculated in two ways as per the PSR.

Build-down Method:

$$\frac{CV\ (\$18.00) - VNM\ (\$11.00)}{\text{CV}\ (\$18.00)} \times 100 = 38.9\ per\ cent$$

Build-up method:

$$\frac{VOM\ (\$8.00)}{\text{CV}\ (\$18.00)} \times 100 = 44.4\ \ per\ cent$$

As the value of production undertaken in Australia can be carried forward in accordance with Article 4.6, the value of originating material is sufficient to meet the QVC requirement when using the build-up formula.

While only $1.00 of originating value was added in Australia, without the ability to accumulate, this value is lost.

7.3 Consignment provision

7.3.1 Section 153ZMQ of the Customs Act sets out the consignment provisions that apply to Indian originating goods imported into Australia.

Section 153ZMQ of the Customs Act - Consignment

(1) Goods are not Indian originating goods under this Division if the goods are transported through a non-party and either or both of the following apply:

(a) the goods undergo further production or any other operation in the non-party (other than unloading, reloading, storing, repacking, relabelling for the purpose of satisfying the requirements of Australia, splitting up or consolidating loads or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) while the goods are in the non-party, the goods do not remain under customs control at all times.

(2) This section applies despite any other provision of this Division.

7.3.2 The consignment provision aims to ensure that only goods that are Indian originating goods are entitled to the benefits granted under ECTA.

7.3.3 A good will lose its status as an Indian originating good if it undergoes any process of production or other operation other than those listed in subparagraph 153ZMQ(1)(a) in a non-Party while *en route* from India to Australia.

7.3.4 If goods transit or tranship through non-parties without sufficient proof that the goods remained under customs control in the non-party and the importer is therefore unable to demonstrate this, the goods will lose their originating status.

7.3.5 As general advice, Australian importers should work with their customs broker or their exporter to ensure that they meet the requirements of ECTA if they intend to claim preferential rates of customs duty. This includes obtaining and retaining official documentation from the non-party transit country that demonstrates that the goods were under customs control at all times.

7.3.6 Importers may also need to inquire directly with the customs agency of the proposed transit country to ensure they can demonstrate, should it be required, that their goods have remained under customs control, and to retain evidence of this in accordance with ECTA's record keeping requirements (see Record keeping obligations in section 9).

Example 1: Consignment provision

Surgical instruments, cotton gowns and bandages, made in India from Indian originating materials, are sent to Bangladesh where they are packaged together in a set and then sterilized for use in operating rooms. They are then sent to Australia with a COO that they are Indian originating goods.

Despite the COO purporting to demonstrate they are Indian originating goods, upon their arrival in Australia, the medical sets are not eligible for preferential treatment as they underwent operations not covered by the exceptions in section 153ZMQ of the Customs Act in a non-Party to ECTA.

Example 2: Processes during consignment

Boats manufactured in India are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to the painted surfaces during the voyage.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Singapore so that the protective veneer can be reapplied to ensure that the vessels are preserved in good condition for the remainder of the voyage to Australia. During their time in Singapore the boats remain under customs control.

This process would not affect the origin status of the vessels as it fits within the exceptions to section 153ZMQ of the Customs Act.

7.4 De minimis provision

7.4.1 The CTC requirement under subsection 153ZMN(4) of the Customs Act is also satisfied if the good meets the requirement of subsection 153ZMN(5) of the Customs Act. The text of these provisions can be found in Section 6.

7.4.2 The CTC rule requires all non-originating materials to undergo the required CTC.

7.4.3 Where a requirement is that the CTC requirement must be satisfied and one or more non-originating materials do not satisfy the CTC requirement, if the relevant *de minimis* provision is met, the CTC requirement is taken to be satisfied.

7.4.4 The *de minimis* provision allows for a low percentage of non-originating materials, which do not meet the relevant CTC rule, to be used in a good and for that good to still meet the CTC rule. There are two separate *de minimis* provisions in ECTA.

7.4.5 Under paragraph 153ZMN(5)(d) of the Customs Act, the CTC requirement is taken to be satisfied for goods of HS Chapters 1 to 49 and 64 to 97 if the total value of the non-originating materials (used in the production of the goods) that do not satisfy the change in tariff classification does not exceed 10 per cent of the customs value of the goods.

7.4.6 Under paragraph 153ZMN(5)(c) of the Customs Act, the CTC requirement is taken to be satisfied for HS Chapters 50 to 63 if the total weight of the non-originating materials used in the production of the goods does not exceed 10 per cent of the total weight of the goods.

Example: CTC – *de minimis* by value for a non-textile and apparel good

A non-textile or apparel good uses two non-originating materials, A and B. As a result of its transformation into the finished good, material A meets the required CTC rule, but material B does not.

Because material B does not make the required change, the finished good will not be considered an originating good. If the customs value of material B is less than 10 per cent of the value of the good, the good will still qualify as an Indian originating good.

The good is valued at $100 and the value of material B is $5. The value of material B is 5 per cent of the good's value, therefore the good is considered to be an Indian originating good, using the *de minimis* rule.

Example: CTC – *de minimis* by weight

A textile good classified within Chapters 55 incorporates three non-originating materials X, Y and Z.

As a result of their transformation into the finished good, materials X and Y meet the CTC rule, but material Z does not.

Because material Z does not meet the required change, the finished good will not qualify as originating. If, however, the weight of material Z is less than 10 per cent of the good's total weight, the good will still qualify as an Indian originating good.

The finished good weighs 50 grams and the weight of material Z is 2 grams, which is 4 per cent of the good's total weight. Therefore, the finished good is considered to be an Indian originating good using the *de minimis* provision.

7.5 Fungible goods or materials

7.5.1 Fungible goods or materials are goods or materials that are essentially identical and interchangeable. This is because they are of the same kind and commercial quality, possess the same technical and physical characteristics and, when incorporated into the finished good, cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination.

7.5.2 Article 4.13 of Chapter 4 of the Agreement covers the treatment of fungible goods of materials.

7.5.3 Article 4.1 of Chapter 4 of the Agreement defines fungible goods or materials as goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

Article 4.13 of Chapter 4 of the Agreement - Fungible goods or materials

(1) Fungible goods or materials shall be treated as originating based on the:

(a) physical separation of the good or material; or

(b) use of any inventory management method recognised in the Generally Accepted Accounting Principles of the Party where the production is performed, if originating and non-originating fungible goods or materials are comingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

(2) An inventory management system under subparagraph 1(a) must ensure that no more goods or materials receive originating status than would have been the case if the fungible goods or materials had been physically segregated.

7.5.4 Many materials used in production are interchangeable for commercial purposes, in that they are of the same kind and commercial quality (e.g. ball bearings, nuts, bolts, screws, etc).

7.5.5 A producer may choose to physically separate originating and non-originating materials. If this is not practical, the producer may store materials obtained from different countries in one container.

7.5.6 When mixing originating and non-originating fungible materials, the producer may determine the origin of the materials based on one of the standard inventory management methods (e.g. last-in first-out, or first-in first-out) allowed under the generally accepted accounting principles of the exporting Party.

7.5.7 It is important to note that once a producer has decided on an inventory management method for a particular material, they must continue to use that method throughout the whole of the financial (fiscal) year.

Example 1: fungible goods or materials

Amongst the materials used by an Indian producer of machinery parts are ball bearings. Depending on pricing and supply, the producer may source the ball bearings from Australia or from China. All of the ball bearings are of identical size and construction.

On 1 January, the producer buys 1 tonne of ball bearings from Australia that are Indian originating goods, and on 3 January buys 1 tonne of ball bearings from China.

The ball bearings have been stored in the one container at the producer's factory. The form of storage of the intermingled ball bearings makes those made in Australia indistinguishable from those sourced from China.

An Australian company places an order with the Indian producer for machinery parts, which require the use of 800 kg of ball bearings.

If the producer elects "first-in first-out" inventory procedures, the 800 kg of ball bearings used to fill the order are considered to be Indian originating goods, regardless of their actual origin.

Example 2: fungible goods or materials

Continuing with the above scenario, an Australian company places an order with the same Indian producer for machinery parts, which requires the use of 500 kg of the same ball bearings.

As the order was placed in the same financial year, the producer must continue to use the "first-in first-out" inventory procedure.

1200 kg of the original 2000 kg remain, the first 200 kg of ball bearings used for this order are considered to be Indian originating goods. The remaining quantity of ball bearings used to fulfil the order (300 kg) are considered to be non-originating materials and the ball bearings must meet the specified PSR for the final good or the General Rule.

7.5.8 If fungible goods or materials are determined to be Indian originating goods and materials under Article 4.13 of Chapter 4 of the Agreement, these materials are not subject to the PSRs or the General Rule, as these apply only to non-originating materials.

7.5.9 The treatment of fungible goods or materials that are non-originating and are used in a production process under Article 4.13 of Chapter 4 of the Agreement is different. Those fungible goods or materials are non-originating materials and must meet the PSR or General Rule that is applicable to the good being produced (for example, the machinery parts in the above examples) if they are to be imported into one of the Parties and subsequently successfully claim preferential rates of customs duty.

7.6 Indirect materials

7.6.1 All indirect materials used in the production of Indian originating goods are treated as originating materials, regardless of where they were produced.

7.6.2 Indirect materials are defined in paragraph 3.1.11 of this Guide and are considered originating materials in paragraph 3.1.15 of this Guide.

Example: Indirect materials

Workers in India use tools and safety equipment produced in Malaysia during the production of soap. Such tools and safety equipment are considered to be originating materials and meet the definition of "indirect materials" in paragraph 3.1.11 of this Guide.

7.7 Non-qualifying operations

7.7.1 Section 153ZMO of the Customs Act sets out the non-qualifying operations[7] that are insufficient for goods to be Indian originating goods merely by reason of having undergone one or more of the specified operations or processes.

Section 153ZMO of the Customs Act: Non-qualifying operations or processes

(1) Goods are not Indian originating goods under this Subdivision merely because of the following operations:

- (a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;
- (b) packaging or presenting the goods for transportation or sale;
- (c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;
- (d) for goods that are textiles—attaching accessory articles (including straps, beads, cords, rings and eyelets) to the goods or ironing or pressing the goods;
- (e) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (g) disassembly of products into parts;
- (h) slaughtering (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of animals;
- (i) simple painting or polishing operations;
- (j) simple peeling, stoning or shelling;
- (k) simple mixing (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of goods, whether or not of different kinds;
- (l) any combination of things referred to in paragraphs (a) to (k).

(2) For the purposes of this section, ***simple*** has the same meaning as it has in Article 4.7 of Chapter 4 of the Agreement.

Example: Non-qualifying operations or processes

An Australian importer seeks to import electric scooters manufactured in Europe into Australia, by first dissembling them and reclassifying the parts in India to take advantage of the preferential rates of customs duty under ECTA.

Electric scooters of 8711.90 are subject to the General Rule.

By removing the engine and battery from the frame and packaging each component separately, the importer believes this may be sufficient to meet the individual components respective requirements.

However, paragraphs 153ZMO(1)(b) and 153ZMO(1)(g) of the Customs Act provide that goods are not originating merely by changing of packaging and disassembling of goods without any physical change in the goods.

As such, these non-qualifying operations are insufficient for the goods to be Indian originating goods.

[7] These are referred to as Minimal Operations in Article 4.7 of Chapter 4 of ECTA

7.8 Packaging materials and containers

7.8.1 Section 153ZMP of the Customs Act outlines the treatment to be given to packaging materials and containers in which imported goods are packaged for retail sale for the purposes of determining the origin of goods.

Section 153ZMP of the Customs Act: Packaging materials and containers

(1) If:

(a) goods are packaged for retail sale in packaging material or a container; and

(b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Division.

Qualifying value content

(2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

(a) the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods;

(b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZML(2).

Qualifying value content of packaging materials and containers

7.8.2 Subsection 153ZML(2) of the Customs Act adds that if the goods are required to meet a QVC rule, the Regulations must provide for the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the QVC of the goods.

Example: Value of packaging material and container

Dolls (9503) are made in the India. The dolls are wrapped in tissue paper and packed in cardboard boxes with the brand logo for retail sale. Both the tissue paper and the cardboard box are produced in Pakistan.

For goods of 9503.00 they are subject to the General Rule.

The tissue paper and cardboard box are disregarded for the purpose of the CTC requirement. Their value, however, must be counted as non-originating in calculating the QVC, if QVC is used.

7.8.3 Section 11 of the Indian Regulations prescribes how to determine the value of the packaging materials or containers.

Section 11 of the Indian Regulations: Value of packaging material and container

If paragraphs 153ZMP(1)(a) and (b) of the Act are satisfied in relation to goods and the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

(a) the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the qualifying value content of the goods under Part 3 of this instrument; and

(b) if that packaging material or container is an originating material—for the purposes of sections 8 and 9 of this instrument, that packaging material or container must be taken into account as an originating material used in the production of the goods; and

(c) if that packaging material or container is a non-originating material—for the purposes of sections 7 and 9 of this instrument, that packaging material or container must be taken into account as a non-originating material used in the production of the goods.

8 Procedures and evidence required to claim preferential rates of customs duty

8.1 Claiming ECTA rates of customs duty

8.1.1 To claim preferential rates of customs duty under ECTA, the provisions in Division 1JA of Part VIII of the Customs Act require the importer to have a valid COO or a copy of one, for the goods at the time of import.

8.1.2 Article 4.20 of Chapter 4 of the Agreement provides that a COO is required to support the claim for preferential rates of customs duty under ECTA.

8.1.3 Further information on DOO that meet the requirements of ECTA can be found in the *Guide to using ECTA to export and import goods* available on the Department of Foreign Affairs and Trade ECTA web page..

Article 4.20 of the Agreement: Claims for Preferential Tariff Treatment

(1) Except as otherwise provided in Article 4.27 (Denial of Preferential Tariff Treatment), each Party shall grant preferential tariff treatment in accordance with this Chapter to an originating good on the basis of a Certificate of Origin.

(2) Unless otherwise provided in this Chapter, for the purposes of claiming preferential tariff treatment, an importing Party shall provide that an importer:

(a) make a declaration that the good qualifies as an originating good;

(b) have a valid Certificate of Origin in its possession at the time the declaration referred to in subparagraph (a) is made;

(c) provide a copy of the Certificate of Origin to the importing Party if required by the Party; and

(d) if required by an importing Party, demonstrate that the requirements in Article 4.14 (Consignment) have been satisfied.

(3) An importing Party may require that an importer who claims preferential tariff treatment shall provide documents and other information to support the claim.

8.2 Certificate of Origin

8.2.1 A COO must be in the agreed format and comply with Article 4.15 of Chapter 4 and Annex 4A, Minimum Information Requirements (see section 8.3 below).

8.2.2 A COO shall be issued by the issuing body of an exporting Party upon an application by an exporter, a producer, or their authorised representative

8.2.3 Article 4.15 of Chapter 4 of the Agreement provides that a COO shall:

(a) be in writing or electronic format;

(b) be in the English language;

(c) specify that the good is originating and meets the requirements of this Chapter;

(d) contain information, as set out in Annex 4A (Minimum Information Requirements) and presented in the same format as provided for in Annex 4A (Minimum Information Requirements);

(e) remain valid for 12 months from the date on which it is completed or issued;

(f) apply to single importation of one or multiple goods provided that each good qualifies as an originating good separately in its own right; and

(g) bear a unique Certificate of Origin number, affixed by the issuing body or authority, as appropriate, in the exporting Party.be in writing, or any other medium, including electronic format as notified by an importing Party;

8.2.4 A COO may indicate two or more invoices issued for single importation.

Article 4.20 of the Agreement: Claims for Preferential Tariff Treatment

(1) The Certificate of Origin shall be issued by an issuing body or authority, as appropriate, of an exporting Party, upon an application by an exporter, producer, or their authorised representative.

(2) It shall bear an authorised signature and official seal of the issuing body or authority, as appropriate. The signature and seal shall be applied manually or electronically.

(3) A Certificate of Origin shall:

(a) be in writing or electronic format;

(b) be in the English language;

(c) specify that the good is originating and meets the requirements of this Chapter;

(d) contain information, as set out in Annex 4A (Minimum Information Requirements) and presented in the same format as provided for in Annex 4A (Minimum Information Requirements);

(e) remain valid for 12 months from the date on which it is completed or issued;

(f) apply to single importation of one or multiple goods provided that each good qualifies as an originating good separately in its own right; and

(g) bear a unique Certificate of Origin number, affixed by the issuing body or authority, as appropriate, in the exporting Party.

(4) A Certificate of Origin may indicate two or more invoices issued for single importation.

8.3 ECTA Issuing Authorities and Bodies

8.3.1 Under ECTA each Party has nominated Issuing Authorities and Bodies to issue COO.

8.3.2 For exports from Australia to India, the Australian Issuing Bodies are:

Australian Issuing Body	Australian Issuing Body Details
Australian Chamber of Commerce and Industry	Phone: 02 6273 2311 Email: info@acci.asn.au Web: www.acci.asn.au
Australian Industry Group	Phone: 1300 776 063 (within Australia) Phone: +61 3 9867 0261 (Overseas) Email: tradedocs@aigroup.com.au Web: www.aigroup.com.au/contact
Ozdocs	Phone: 02 9899 2000 Email: info@ozdocs.com.au Web: www.ozdocs.com.au

8.3.3 For imports into Australia from India, the Indian Issuing Authorities are:

(i) Agricultural and Processed Food Products Export Development Authority (APEDA)

(ii) Central Silk Board

(iii) Cochin Special Economic Zone

(iv) Coir Board

(v) Directorate General of Foreign Trade (DGFT)

(vi) Export Inspection Council (EIC)

(vii) Falta Special Economic Zone (FSEZ)

(viii) Kandla Special Economic Zone (KSEZ)

(ix) MEPZ Special Economic Zone

(x) The Marine Products Export Development Authority (MPEDA)

(xi) Noida Special Economic Zone (NSEZ)

(xii) O/o DC (Handicrafts)

(xiii) SEEPZ Special Economic Zone

(xiv) Spices Board

(xv) Textiles Committee

(xvi) Tobacco Board

(xvii) Vishakhapatnam Special Economic Zone (VSEZ)

8.3.4 More information about certificates of origin issued by Indian Issuing Authorities can be found at: https://coo.dgft.gov.in/

8.4 Annex 4A: Data Requirements

8.4.1 A certificate of origin that is the basis for a claim for preferential rates of customs duty under ECTA. The following template is found in Annex 4A of the Agreement represents the minimum information requirements:

1. Exporter's Name, Address and Country:	Certification No.:		Number of page:
2. Producer's Name, Address and Country:	**INDIA-AUSTRALIA ECONOMIC COOPERATION AND TRADE AGREEMENT (Ind-Aus ECTA)** **CERTIFICATE OF ORIGIN**		
3. Importer's or Consignee's Name, Address and Country:			
4. Transport details:			
5. Item Number (as necessary); Marks and numbers; Number and Kind of packages; Description of good(s); HS Code (six-digit level)	6. Origin criteria	7. G[illegible]ght or othe[illegible]antity	8. Invoice number(s) and [illegible](s)
1.			
2.			
3.			
4.			
9. Remarks (if applicable): ☐ ISSUED RETROSPE[illegible]LY	10. Non-Party Invoicing Name, Address, and Country (if applicable):		
11. Declaration by the expo[illegible]r: I, the undersig[illegible] declare tha[illegible] th[illegible]bove d[illegible]s and statement[illegible]rde[illegible]d accurat[illegible]e good(s) described above meet the [illegible]ndition(s) required f[illegible]the issuance of this certificate: and - th[illegible]country of o[illegible]of the [illegible]od(s) described above is: INDIA Place and Date: Name : Company :	**12. Certification:** It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. …… Place and date, signature and stamp of issuing authority.		

8.5 Guidance for completing ECTA COO

8.5.1 Parties to ECTA have agreed a document that clarifies the understanding between Australia and India on resolving issues related to COOs under ECTA. The document sets out the following for how to complete the COO.

Box 1: State the full name and address (including Country) of the Exporter.

Box 2: State the full name and address (including Country) of the Producer, if different from the Exporter. If there are multiple producers list them all.

(NB - we do not interpret this as providing an option to keep the producers' name confidential)

Box 3: State the full name and address (including country) of the importer/consignee.

Box 4: Details in this box could include the means of transport, the route, the departure date, transport vehicle number, port of loading and port of destination.

Box 5: Provide a description of the good and the HS classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the certification. Each good claiming preferential tariff treatment must qualify in its own right.

Accordingly, if several goods are on the same COO and one is subject to a verification request, the other goods should be processed without verification.

Box 6: State the origin criterion. There are no overleaf notes in the treaty. However, for clarity please note that COOs must contain one of the following codes in this box:

"WO" for goods listed as "WO"; means that good must be wholly obtained in the territory of one or both Parties within the meaning of the ROO chapter.

"PSR" for goods listed in Annexure-B; or

"CTSH + QVC 35 Build-up "or "CTSH + QVC 45 Build-down" if the goods are using the General Rule as per Article 4.3.1 of the Rules of Origin (ROO) chapter.

Tick the cumulation box if cumulation applies in terms of Article 4.5 of the ROO chapter.

Box 7: State the gross weight of the consignment (e.g., litres, m2 etc).

Box 8: State the invoice numbers (the details of any relevant non-party go into box 10).

Box 9: Tick the issued retrospectively box on COOs issued more than five days after export and up to 12 months after export. For clarity five days refers to five business days in the country of import (and does not include public holidays). In this case the Export Documentation Number is required. This can be either the Shipping Bill (Export Declaration) Number and Date or a transport document (e.g., bill of lading/air waybill) Number and Date. The Export Documentation Number is not required if the COO is not issued retrospectively.

Box 10: State the name of company issuing the invoice, its address, and country when an invoice is issued in a non-party.

Box 11: The box must be completed, signed, and dated by the authorised exporter representative. If the COO is digitally signed by the exporter, then there is no need to sign it physically. In the case of COO issued by India there is no requirement to have a signature in this field if the COO is completed and issued through India's Common Digital Platform for Issuance of Certificate of Origin (https://coo.dgft.gov.in/).

Box 12: The box must be completed, signed, and stamped by the authorised person of the issuing authority, using the notified signatures and seals.

8.5.2 It is important to emphasise that in the case of COO issued by India there is no requirement to have a signature in this field if the COO is completed and issued through India's Common Digital Platform for Issuance of Certificate of Origin (https://coo.dgft.gov.in/).

8.5.3 Parties have agreed that the Export Document Number only has to be completed in the case of retrospectively issued COO issued 5 or more business days in the party of importation and this number can be:

(a) Shipping Bill (Export Declaration) Number and date; or

(b) Transport Document (Bill of lading/ Airway Bill) Number and date; or

(c) Other such document numbers as agreed by the Parties.

8.5.4 The Export Document Number does not need to be completed for COO that are not issued retrospectively.

8.5.5 In the case of imports into Australia, it is expected that a number of codes may appear in box 6 for the origin criteria of the goods. While four are listed in the guidance, the ABF will accept COO which may use other codes if they correspond to a particular PSR under ECTA.

8.5.6 The following table sets out the codes to be used in the Preferential Rule Field in the ICS:

ECTA COO Origin Criteria	ICS Code
WO	WO
PSR	PSR
CTSH + QVC 35 Build-up	PSR
CTSH + QVC 45 Build-down	PSR
Any other codes related to a specific PSR such as: CC CC except Ch 2 and 3 CTH QVC40 CTSH + QVC1.5 Melt and Pour	PSR

8.5.7 Essentially, if the goods is not Wholly Obtained or Produced, it is likely to be using either a PSR or the GR and will be entered as PSR in the ICS.

8.5.8 CTSH + QVC 35 Build-up and CTSH + QVC 45 Build-down represent the General Rule.

8.6 Minor Errors and Discrepancies on ECTA COO

8.6.1 The ABF provides *Guidance on minor errors or discrepancies on Certificates of Origin obtained for Free Trade Agreements*.

8.6.2 Generally, the COO will not be invalid if the following three aspects apply:

- the errors or discrepancies are minor;
- the origin of the good is not in doubt; and
- the COO otherwise relates to the goods.

8.6.3 Often this relates to minor transcription errors or discrepancies between documentation which may include:

- spelling, grammatical or typographical errors in the Certificate of Origin
- differences in the units of measurement stated in the COO and the units of measurement stated in supporting documents such as invoices/packing lists and related documentation. (In this case, the ABF would still expect the amounts to be corrected)
- differences in the paper size of the COO and the template provided
- protrusions across fields
- slight differences in description of the goods between the COO and the supporting documents
- differences in the size of marks and executions, including three asterisks (*) or finishing slash (/) in the 'goods description' field on the COO

8.6.4 The guidance also addresses discrepancies in

- HS Codes
- Origin Criteria
- Exporter name and details
- Importer name and details

8.6.5 To be satisfied that the origin of the goods is not in doubt, all the essential data information (that is, all non-optional information) must be included.

8.6.6 After making enquiries, if an importer or their Licensed Customs Broke (LCB) determines that an error or discrepancy on a COO is minor in nature, the importer or LCB must also assess that the error does not cause doubt as to the origin of the goods, and ensure there is no doubt that the COO relates to the goods.

8.6.7 Each discrepancy or issue must be risk assessed on a case-by-case basis. It is not possible to provide a rigid rule stating, for example, that a certain type of error or discrepancy will always be minor and will not invalidate a COO.

8.6.8 Where practical, a replacement COO should be sought in the first instance.

8.6.9 If there are any patterns of systemic discrepancies such as between Australian and other party for HS codes of certain goods, importers and LCB should advise the ABF by contacting tradeagreements@abf.gov.au with evidence and any reasons available for those discrepancies. The ABF will liaise with the Department of Foreign Affairs and Trade to explore whether such discrepancies can be resolved between the parties to the FTA.

8.7 Waiver of COO

8.7.1 Division 1JA of the Customs Act provides for the waiver of COO under certain conditions.

8.7.2 The ABF has waived the requirement to obtain or present a COO in accordance with ACN 2022/55 for Australian Trusted Traders importing goods under IA-ECTA.

8.7.3 Even where the requirement to obtain or present a COO is waived for Australian Trusted Traders importing goods, importers will still be required to keep evidence (for a period of a minimum five years from the day of importation) that imported goods are originating and present this if requested. Importers must otherwise comply with all requirements of the Agreement.

8.7.4 A COO is not required for imports when the total customs value of the originating goods does not exceed AUD1000[8], provided the importation does not form Part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the requirements of the Agreement.

[8] For custom clearance purposes the importer will still be required to complete a self-assessed clearance declaration when the customs value does not exceed AUD1000. In these circumstances a COO is not required

8.8 Refunds

8.8.1 In order to claim a refund, the importer must have a valid COO for the goods, or a copy of one, in order to claim a refund under section 23 of the Customs International Obligations Regulation.

8.8.2 A refund can only be sought for Indian originating goods that have been entered for home consumption on or after the date of entry into force of ECTA which was 29 December 2022.

8.8.3 Section 23 of the Customs International Obligations Regulation sets out refund reasons for the ECTA under item 10A and 10B. The ICS refund reason code for both items is **23A10A**.

Item	Class of Goods	Circumstances
10A	Indian originating goods	Duty has been paid on the goods.
10B	Goods that would have been Indian originating goods if, at the time the goods were imported, the importer held a certificate of origin (within the meaning of subsection 153ZML(1) of the Act), or a copy of one, for the goods	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a certificate of origin (within the meaning of subsection 153ZML(1) of the Act), or a copy of one, for the goods at the time of making the application for the refund.

Item 10A of Section 23 of the Customs International Obligations Regulation

8.8.4 Where an importer pay customs duty on Indian originating goods while holding a valid COO for the goods, or a copy of one, at the time the goods were imported, the importer may claim a refund of the customs duty paid on those goods.

8.8.5 Item 10A applies to goods that are Indian originating goods at the time of importation, and the importer did not claim preferential tariff treatment at the time the goods were imported. Item 19 requires the importer to hold a valid COO for the goods, or a copy of it, at the time the goods were imported and ensure that all legislative requirements are met to allow ECTA preferential rates of customs duty to be claimed.

8.8.6 Item 10A can be used for refunds up to four years from the date on which the duty for the goods was paid. There is no requirement that the COO be valid at the time a refund is sought.

8.8.7 Item 10A cannot be used where the importer was not in possession of a COO for the goods, or a copy of one, at the time the goods were imported.

Item 10B of Section 23 of the Customs International Obligations Regulation

8.8.8 Where an importer pays customs duty on Indian originating goods as a valid COO for the goods, or a copy of one, was not available at the time the goods were imported, the importer may claim a refund of the customs duty paid on those goods.

8.8.9 Item 10B applies to goods that would have been Indian originating goods, if at the time the goods were imported, the importer held a valid COO for the goods, or a copy of one, or other documentation supporting that the goods are originating. This item is used when the duty has been paid on the goods and the importer obtains a valid COO after the goods were imported.

8.8.10 While Item 10B can be used for refunds up to four years from the date on which the duty for the goods was paid, this item can only be used while the COO remains valid. This may be only up to two years in accordance with Section 8.10.

8.8.11 Under Chapter 4 of the Agreement, a COO issued after the goods were imported, or retrospectively, shall remain valid for a period of 12 months from the date it is completed or issued and any refund is limited to this timeframe.

8.8.12 Where a COO has not been issued at the time of exportation or within 5 working days from the date of shipment due to valid reasons, the COO may be issued retrospectively. It will bear the words “ISSUED RETROSPECTIVELY” in the COO, with the issuing body or authority also recording the reasons in writing on the exceptional circumstances.

8.8.13 The COO can be issued retrospectively no later than 12 months from the date of shipment.

8.8.14 Where an Australian Trusted Trader has paid duty on goods that were later understood to be ECTA originating goods, they may be able to apply for a refund of customs duty paid without the need for a COO. The Australian Trusted Trader may still be required to provide evidence on the origin of the goods to support an application for a refund, such as commercial documentation, statements of manufacture or a valid COO.

8.9 Compliance procedures for claiming preference

8.9.1 Under the Customs Act (sections 71DA, 240AA, 240AB and 240AC) the ABF may seek further evidence additional to a COO through:

(a) written requests for information from the importer

(b) written requests for information from the competent authority and issuing body or authority of the exporting Party

(c) written requests for information from the exporter or producer of the exporting Party

(d) verification visits to the premises of the exporter or the producer in a Party to allow ABF officers to review the records referring to origin - including accounting records.

8.9.2 The ABF may deny a claim for preferential rates of customs duty if:

(a) it determines that the good does not meet the requirements of Division 1JA of Part VIII of the Customs Act to qualify for preferential rates of customs duty

(b) the importer, exporter, producer or authorised agent fails to comply with the relevant requirements of the Customs Act

(c) after seeking further information under sections 71DA, 240AA, 240AB and 240AC of the Customs Act, the ABF does not:

(i) receive sufficient information to determine that the good qualifies as originating

(ii) receive written consent to conduct a verification visit from the exporter or producer, after receipt of written notification for a verification visit

(iii) receive a response to the requests outlined in paragraph 8.9.1 of this Guide.

8.9.3 If, after making a claim for preferential rates of customs duty, the importer becomes aware that the goods were ineligible for a preferential rate of customs duty, the importer must, as soon as practicable, amend the import declaration and pay any short-fall amount of customs duty. This action may protect an importer against liability for an offence under subsections 243T(1) or 243U(1) of the Customs Act, if the amendment is considered a voluntary disclosure as explained in ACN 2004/05 and DIBPN 2016-35.

8.9.4 Where a short payment results from an incorrectly claimed preferential rate of customs duty, an importer may be protected from liability for an offence against subsection 243T(1) or 243U(1) of the Customs Act if, at the time of entry of the goods, they hold a COO that states that a particular preference criterion of Division 1JA of Part VIII of the Customs Act has been met.

8.9.5 The protection will not apply where:

(a) other information available to the importer indicated that the statement on the COO was incorrect or unreliable

(b) the COO could not be clearly related to the goods in question.

8.9.6 Similarly, the protection will not apply once the ABF has given the owner of the goods or their agent an audit notice under section 214AD of the Customs Act; or the ABF exercises a power under a Customs-related law to verify the accuracy of the information included in the statement; or where the ABF has issued an infringement notice in relation to the statement; or where the ABF has commenced legal proceedings in relation to the statement.

8.9.7 Where an import declaration states that a preferential rate of customs duty is being applied for, this will be taken to indicate that the owner of the goods possesses evidence that the stated facts are correct. The criteria for eligibility for preferential rates of customs duty under ECTA are set out in Division 1JA of Part VIII of the Customs Act.

8.9.8 The importer must have a valid COO at the time of entering the goods. An importer may be required to produce the COO and other evidence either at the time of entering the goods or at a later date to demonstrate any claims made.

8.9.9 If the ABF finds that preferential rate of customs duty is inapplicable or that there is insufficient evidence to justify the claim for a preferential rate of customs duty, the general rate of duty is payable on the goods and there will be a liability for the payment of any customs duty and GST that has been short-paid. In these circumstances, an offence may have been committed against subsections 243T(1) or 243U(1) of the Customs Act. An administrative penalty under the *Taxation Administration Act 1953* may also apply where there is a shortfall amount of GST. An infringement notice may be served in lieu of prosecution for an offence against subsections 243T(1) or 243U(1) of the Customs Act.

8.10 Validity

8.10.1 Under Chapter 4 of the Agreement, a certificate of origin remains valid for 12 months from the date on which it is issued or completed. A COO can be issued retrospectively no later than 12 months from the date of shipment.

9 Record keeping obligations

9.1 Importers

9.1.1 Australian importers must maintain the documentation relating to the importation of the goods for five years after the date of the goods' importation.

9.1.2 Importers must still comply with all record provisions in the Customs Act.

9.2 Exporters and producers

9.2.1 Part 5 of Indian Regulations sets out that Australian exporters or producers of goods that provide a certificate of origin must keep, for five years starting on the date the certificate of origin for the goods is issued, all records necessary to demonstrate that the goods are Indian originating goods.

9.2.2 The exporter or producer must also ensure all of the following:

(i) that the records are kept in a form that would enable a determination of whether the goods are originating goods in accordance with the Agreement

(ii) if the records are not in English, that the records are kept in a place and form that would enable an English translation to be readily made

(iii) if the records are kept by mechanical or electronic means, that the records are readily convertible into a hard copy in English

9.2.3 The records may be kept at any place, whether or not in Australia.

Records to be kept by producers and exporters of goods claiming to be Australian originating under ECTA

Item	Records	Producer	Exporter
1.	Records of the purchase of the goods	✓	✓*iii*
2.	Records of the purchase of the goods by the person to whom the goods are exported		✓
3.	Evidence of the classification of the goods under the Harmonized System	✓*v*	✓
4.	Evidence that payment has been made for the goods	✓	✓
5.	Evidence of the value of the goods	✓	
6.	Records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System	✓	
7.	Evidence of the value of those materials	✓	
8.	Records of the production of the goods	✓	
9.	If the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased: a. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and b. evidence of the value of the accessories, spare parts, tools or instructional or other information materials	✓*i*	✓*iii*
10.	If the goods include any accessories, spare parts, tools or instructional or other information materials that were produced: a. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and b. evidence of the value of the materials so purchased; and c. records of the production of the accessories, spare parts, tools or instructional or other information materials	✓*ii*	✓*iv*
11.	If the goods are packaged for retail sale in packaging material or a container that was purchased: a. records of the purchase of the packaging material or container; and b. evidence of the value of the packaging material or container	✓*i*	✓*iii*
12.	If the goods are packaged for retail sale in packaging material or a container that was produced: a. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and b. evidence of the value of the materials so purchased; and c. records of the production of the packaging material or container	✓*ii*	✓*iv*
13.	A copy of the certificate of origin (within the meaning of section 153ZML(1) of the Act) in relation to the goods	✓	✓

Notes

i. If purchased by the producer
ii. If produced by the producer
iii. If purchased by the exporter
iv. If produced by the exporter
v. If the producer is also the exporter

10 Origin advice rulings

10.1 Provision of origin advice rulings

10.1.1 ECTA allows for Australian importers, exporters and producers of Indian originating goods to obtain advance rulings (see Article 5.12 of Chapter 5 of the Agreement) from the ABF regarding future importations of goods into Australia.

10.2 Policy and practice

10.2.1 The ABF provides a Guide to origin advice rulings at:
https://www.abf.gov.au/free-trade-agreements/files/origin-advice-guide.pdf

11 Related policies and references

11.1 Associated documents

- Origin Advice Rulings Guide
- Integrated Cargo System – Claiming Preferential Tariff Rates
- Guidance on minor errors or discrepancies on Certificates of Origin obtained for Free Trade Agreements
- Guidance for completing ECTA COO
- Sample ECTA COO
- Sample Retrospective ECTA COO

12 Document details

12.1 Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	13 December 2022	Tariff and Trade Policy Section	Initial Version
1.1	22 December 2022	Tariff and Trade Policy Section	Inclusion of ATT Waiver Benefit in 8.5
1.2	17 March 2023	Tariff and Trade Policy Section	Updated Sample COO Inclusion of Guidance for completing ECTA COO in New 8.5 Inclusion of Guidance on minor errors or discrepancies on Certificates of Origin obtained for Free Trade Agreements in new 8.6